

REMARKS

Claims 1-6 were examined and reported in the Office Action. Claims 1-6 are rejected. Claims 2, 5 and 6 are cancelled. Claims 1 and 3 are amended. Claims 1, 3 and 4 remain.

Applicant requests reconsideration of the application in view of the following remarks.

I. 35 U.S.C. § 112

It is asserted in the Office Action that claims 2-3 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant has canceled claim 2 and amended claim 3 to overcome the 35 U.S.C. §112, second paragraph rejections.

Accordingly, withdrawal of the 35 U.S.C. §112, second paragraph rejections for claims 2-3 are respectfully requested.

II. 35 U.S.C. § 103

A. It is asserted in the Office Action that Claims 1 and 4 are rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over U. S. Patent No. 6,504,611 issued to Kogan et al. ("Kogan") in view of U. S. Patent No. 6,041,071 issued to Tayebati ("Tayebati").

Applicant has amended claim 1 with the limitations of claim 2. Applicant has removed the limitation "compensation means" for clarification. Applicant asserts that the difference in the wavelengths of the light transmitted from the first and second light sources may be compensated or not compensated. (See Applicant's specification, page 9, line 17 to page 10, line 3). For compensation, the tilt micrometer stage 230 is used. (*Id.*).

It is asserted in the Office Action that claim 2 would be allowed if written in independent form and to overcome the 35 U.S.C. §112, second paragraph rejection. As

mentioned above, Applicant has amended claim 1 to overcome the 35 U.S.C. §112, second paragraph rejection and included the limitations of claim 2. Therefore, the aforementioned U.S.C. § 103(a) rejections are moot.

Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejections for Claims 1 and 4 are respectfully requested.

B. It is asserted in the Office Action that Claim 6 is rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over Kogan in view of Tayebati and further in view of U. S. Patent No. 5,926,594 issued to Song et al. ("Song"). Applicant has canceled claim 6. Therefore, the aforementioned U.S.C. § 103(a) rejection is moot.

Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejection for Claim 6 is respectfully requested.

C. It is asserted in the Office Action that Claim 5 is rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over Kogan in view of Tayebati and further in view of U. S. Patent No. 5,838,450 issued to McCoy et al. ("McCoy"). Applicant has canceled claim 5. Therefore, the aforementioned U.S.C. § 103(a) rejection is moot.

Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejection for claim 5 is respectfully requested.

III. Allowable Subject Matter

Applicant notes with appreciation the Examiner's assertion that claims 2-3 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112, second paragraph to include all of the limitations of the base claim and any intervening claims.

As mentioned above, Applicant has amended claim 1 to include the limitations of claim 2 and to overcome the 35 U.S.C. §112, second paragraph rejections.

Applicant respectfully asserts that claims 1, 3 and 4, as it now stands, are allowable for the reasons given above.

CONCLUSION

In view of the foregoing, it is submitted that claims 1, 3 and 4 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated: March 1, 2005

By: _____

Steven Laut, Reg. No. 47,736

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, California 90025
(310) 207-3800

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail with sufficient postage in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia 22313-1450 on March 1, 2005.

Jean Svoboda